

Minnesota Fathers & Families Network – Comparison of three Custody/Parenting Time Bills Introduced in 2009¹



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| Description | House File #, Author(s), Status | Senate File #, Author(s), Status | How it would change the law/status quo |
|---|---|---|---|
| <p>CURRENT LAW IN MINNESOTA REGARDING PARENTS, CUSTODY AND PARENTING TIME</p> <ul style="list-style-type: none"> In custody and parenting time disputes for divorced or never-married parents, child custody is determined based on the “best interests of the child” standard, 13 factors enumerated in Minnesota law, Minn. Stat. § 518.17, subd 1. If joint legal or joint physical custody is sought by a party, there are four additional factors the court must consider, see Minn. Stat. § 518.17, subd 2. Presumptions in current law include: (1) upon the request of either or both parents, joint legal custody is in the best interests of the child, Minn. Stat. § 518.17, subd 2; (2) joint legal or joint physical custody is not in the best interests of a child if there has been domestic abuse, Minn. Stat. § 518.17, subd 2; (3) each parent is entitled to receive at least 25 percent of the parenting time for the child, Minn. Stat. § 518.175, subd 1(e). These are all rebuttable presumptions, meaning they can be overcome. The statutes in Minnesota do not state a presumption or preference for or against joint physical custody. However, Minnesota courts deciding custody disputes when parents can’t agree have historically taken a position that joint physical custody is usually not preferred, except in “exceptional cases.” Appellate cases in Minnesota cite concerns about lack of routine and stability for children and parental inability to cooperate and resolve disputes, for example. While the appellate courts have not expressly overruled this “case law” preference (which is to be followed by the lower courts making the decisions in individual cases), some more recent cases do not recognize a preference against joint physical custody. For example, in 2005 the Minnesota Court of Appeals stated “[t]here is neither a statutory preference disfavoring joint physical custody, nor is there a preference against joint physical custody if the district court finds that it is in the best interest of the child and the four joint custody factors support such a determination.” <i>Schallinger v. Schallinger</i>, 699 N.W.2d 15 (Minn. Ct. App. 2005). Parents and courts can also create a <i>parenting plan</i> instead of a traditional court order that defines custody and parenting time rights. A parenting plan must include a schedule of time each parent spends with the child, address decision making responsibilities, and identify a method of resolving disputes, Minn. Stat. § 518.1705, subd 2, but it may also include other issues and matters that the parents agree to regarding the child. If both parents do not agree to a parenting plan, the court may create one on its own, except if a parent has committed domestic abuse against a parent or child who is a party to, or subject of, the matter before the court. Parents voluntarily agreeing to parenting plans may substitute other terms for physical and legal custody, including designations of joint or sole custody, providing that the terms used in the substitution are defined in the parenting plan. | | | |
| <p>Rebuttable presumption of minimum parenting time changed, findings required, and parenting expense adjustment changed</p> | <p>HF1003, Mahoney, Draskowski, Scalze, Johnson, Scott, Eastlund, Severson.</p> <p>2/19 Introduced. Heard in Civil Justice Committee on 3/2 and bill laid over.</p> | <p>SF1223, Saltzman, Scheid, Murphy, Koch.</p> <p>3/5 Introduced and referred to Judiciary.</p> | <ul style="list-style-type: none"> Changes the rebuttable presumption of parenting time to 40 percent Requires the court to make written findings if the presumption is overcome Creates another parenting expense adjustment tier – for cases in which the obligor has more than 30 percent parenting time but less 45.1 percent, the parenting expense adjustment to the basic child support order would be 30 percent |
| <p>Child custody presumptions modified, parenting time statute modified</p> | <p>HF1183, Smith, Paymar.</p> <p>3/2 Introduced and referred to Civil Justice Committee.</p> | <p>SF1248, Betzold.</p> <p>3/9 Introduced and referred to the Judiciary Committee.</p> | <ul style="list-style-type: none"> No presumption for sole or joint physical or legal custody – best interests test only The court must make detailed findings on each of the best interest factors Specifies that a significant change in circumstances is required to change parenting time (which would include a change in the child’s age and developmental needs) Applies time limits for motions to change custody to motions to change parenting time Where parties agree fully or partially on custody or parenting time or both, the court must consider the agreement as soon as possible without requiring the parties to submit to any other program (i.e. parent education) as a prerequisite to court consideration |
| <p>Children’s equal parenting access act provided, rebuttable presumption of joint physical custody</p> | <p>HF2013, Draskowski.</p> <p>3/23 Introduced and referred to Civil Justice Committee.</p> | <p>No Senate companion at this time.</p> | <ul style="list-style-type: none"> Changes definition of joint physical custody to mean “the parents shall share time with the child as equally as possible” Creates a rebuttable presumption of joint legal and joint physical custody that can only be overcome by demonstrating parental unfitness that would cause substantial harm to the child, and requires proof by clear and convincing evidence standard Limits ability of the court to limit parenting time absent compelling necessity to prevent substantial and imminent harm to the child Creates public policy for Minnesota for statutes related to families, including a rebuttable presumption for parents of equal time with their children |

¹This does not include all legislation that would affect custody/parenting time rights in Minnesota. For example, legislation introduced that would affect the right of grandparents is not included here.